

1 BEFORE THE
2 ILLINOIS COMMERCE COMMISSION

3
4 REGULAR PUBLIC UTILITY OPEN MEETING

5
6 Chicago, Illinois
7 February 2, 2010

8 Met pursuant to notice at 10:30 a.m.

9
10 BEFORE:

11 MR. MANUEL FLORES, Chairman

12 MS. LULA M. FORD, Commissioner

13 MS. ERIN M. O'CONNELL-DIAZ, Commissioner

14 MR. SHERMAN J. ELLIOTT, Commissioner
 via telephone

15 MR. JOHN T. COLGAN, Commissioner

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21 SULLIVAN REPORTING COMPANY, by
22 Tracy L. Overocker, CSR

1	<u>I N D E X</u>	
2	<u>DOCKET NUMBER:</u>	<u>PAGE</u>
3	06-0706.	10
4	09-0399, 09-0433,	
5	09-0419, 09-0420, 09-0428.	30
6	09-0514.	33
7	08-0175.	34
8	09-0461.	68
9	09-0251.	69
10	08-0569.	71
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
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1 CHAIRMAN FLORES: Good morning. Pursuant to
2 the provisions of the Illinois Open Meetings Act, I
3 now convene a regularly scheduled bench session of
4 the Illinois Commerce Commission.

5 With me in Chicago are Commissioners
6 Ford, O'Connell-Diaz, and Colgan. I am
7 Commissioner -- I am Chairman Manuel Flores. We have
8 a quorum here this morning. Commissioner Elliott is
9 joining us via remote connection in our Springfield
10 office.

11 Good morning, Commissioner.

12 COMMISSIONER ELLIOTT: Good morning.

13 CHAIRMAN FLORES: Is there a motion to allow
14 Commissioner Elliott to join us via remote
15 connection?

16 COMMISSIONER COLGAN: So moved.

17 CHAIRMAN FLORES: Is there a second, please?

18 COMMISSIONER O'CONNELL-DIAZ: Seconded.

19 CHAIRMAN FLORES: It's been moved and seconded.

20 All in favor say "aye."

21 (Chorus of ayes.)

22 CHAIRMAN FLORES: The vote is 4-0.

1 Commissioner Elliott will be allowed to join the
2 meeting via remote connection.

3 Before moving into the agenda,
4 according to Section 1700.10 of the Illinois
5 Administrative Code, this is the time that we allow
6 members of the public to address the Commission.
7 Members of the public wishing to address the
8 Commission must notify the Chief Clerk's Office at
9 least 24 hours prior to the bench session.

10 According to the Chief Clerk's Office,
11 there are two requests to speak. Speakers are
12 permitted 3 minutes to address the Commission.
13 Please be advised that the Commission values the
14 public's participation in the public comment period;
15 but according to ex-parte laws and other procedural
16 rules, we are unable to respond.

17 First, we have Mr. Kirk Smith who is
18 representing himself as well as the Fox River
19 Alliance.

20 Mr. Kirk Smith, if you can please step
21 up.

22 MR. KIRK SMITH: Good morning.

1 CHAIRMAN FLORES: Good morning.

2 MR. KIRK SMITH: I first thank you for allowing
3 me to speak on behalf of a petition I filed in
4 Docket 06-0706. Let me assure you, despite claims by
5 others, myself and recent intervenors did participate
6 in this process early speaking with Ameren staff and
7 at public meetings, and I recently found this letter
8 dated 2007 detailing my concerns. However, I do
9 apologize for intervening late and at the time, I was
10 a bit naïve about the process.

11 In short, upon reopening the case, we
12 asked the ICC Staff counsel how we should proceed,
13 and they advised us to possibly consider additional
14 routes; but recently, the Administrative Law Judge,
15 Albers, ruled against it. So there appears to be
16 some confusion as to the exact content of the ruling
17 that reopened the case. Today, I am here just to ask
18 for clarification of your decision.

19 Despite the extra burden on my part,
20 I'm happy to participate in longer proceedings if
21 they could produce a better result. Ameren's primary
22 route in this case is actually quite good in

1 comparison to the other proposed routes. When
2 counsel advised us to consider other routes, I
3 thought, Wow, all I have to do is find a route that
4 exceeds a good route in the 12 criteria: A minimal
5 environmental effect, minimal aviation safety
6 concerns and will not produce a large number of
7 intervenors.

8 I was actually surprised to find, in
9 this letter dated March 30th, 2007, in the record of
10 the case, a route that did just that. So I
11 considered, for instance, proximity to homes. This
12 route, as proposed by the City of Ottawa, can be
13 constructed that goes by, actually, zero homes
14 compared to 80 or more for the Ameren route and
15 compared to 150 or more for the route that was cited
16 in the decided in the earlier proceedings. From what
17 I can tell, this route is the lowest cost, lowest
18 impact and avoids all the issues that got us here. I
19 believe if this route was further investigated at
20 that time, we wouldn't even be here. And this
21 newspaper article seems like the public is behind
22 this route and this petition -- this recent

1 resolution from the City of Ottawa, they're behind
2 the route.

3 So, what's the -- you know, at this
4 point, I guess it's your decision. The bad thing is
5 if we consider another route in this case, it delays
6 the case and I understand the desire for expediency.

7 However, the change of the -- the
8 failure of the service is quite small and I think
9 that right now, you have a choice of considering an
10 additional -- allowing the proceedings to consider an
11 additional route or limiting it to the two routes
12 that Judge Albers had limited it to. And I would --
13 I would hope that you would consider that -- that we
14 can probably come to a better resolution in the end
15 if we're able to consider routes in a more open and
16 free basis.

17 I look forward to your clarification
18 on this, and I appreciate your time and I will
19 respect your decision in this matter.

20 CHAIRMAN FLORES: Thank you very much,
21 Mr. Smith.

22 Next we have Mr. Fred Morelli, Jr.

1 also representing the Fox River Alliance.

2 Mr. Morelli.

3 MR. FRED MORELLI: Thank you. I'm here
4 representing the Fox River Alliance.

5 I think the issue before us is whether
6 or not --

7 COMMISSIONER ELLIOTT: Can you move closer to
8 the microphone, please.

9 CHAIRMAN FLORES: Can you move closer to the
10 microphone, sir?

11 MR. FRED MORELLI: -- is whether or not Judge
12 Albers will be permitted to consider other routes
13 other than the Route 71 route and the route up the
14 Fox River. It's our position and feeling that the
15 route up the Fox River is simply indefensible, not
16 only because of the ecological damage that will be
17 caused, but also because of the danger to the sky
18 divers and the existing airport.

19 Part of that route goes up Champaign
20 Street. We feel that is likewise indefensible
21 because of the proximity to the helicopter landing
22 area near the Ottawa Hospital. That leaves only the

1 Route 71 route. And as far as whether that's a
2 viable route, we think it is; but we're not urging
3 that.

4 Kirk Smith has put together a document
5 which I feel is just magnificent -- it covers
6 everything -- and he's proposed a route that I think
7 is far superior to the routes -- the route going up
8 Highway 71 and we are asking that Judge Albers be
9 permitted to consider the route that Kirk Smith has
10 put together. He's touched on everything that needed
11 to be touched on. There are 12 things and he's
12 touched on and he's addressed them all.

13 There's no time to go into everything;
14 but all of that is in his testimony, which we was
15 filed when we were permitted to intervene. And all I
16 ask is that you read that, that you consider that and
17 that you allow the Administrative Law Judge, Judge
18 Albers, to consider that route.

19 Thank you.

20 CHAIRMAN FLORES: Thank you.

21 That concludes our public comment
22 period.

1 Turning to the first item on the
2 agenda, Docket 06-0706, we have Petitions for
3 Interlocutory Reviews submitted by three intervenors:
4 Skydive Chicago, Incorporated, Ottawa Airport,
5 Incorporated, and FRA. I would -- that's the Fox
6 River Alliance.

7 The intervenors argue that the scope
8 of the reopening be expanded to consider all
9 available options for AmerenIP and Ameren Illinois
10 Transmission Company's transmission line.
11 Administrative Law Judge Gilbert recommends denying
12 the Petition for Interlocutory Review.

13 Administrative Law Judge Gilbert,
14 would you please brief us on this matter, sir.

15 COMMISSIONER ELLIOTT: I'm sorry. It's
16 Judge Albers.

17 CHAIRMAN FLORES: I'm sorry. Yes, I just -- I
18 apologize to Judge Albers.

19 JUDGE ALBERS: Thank you. That's all right.
20 I'm here for you.

21 CHAIRMAN FLORES: If you could please speak
22 loudly.

1 JUDGE ALBERS: Yes. This is quite an extensive
2 record. So I will try to give you the nutshell
3 version of it and you can ask for details if you'd
4 like.

5 The Company filed a petition in
6 November of '06 asking for approval to develop two
7 transmission lines; one between LaSalle, Illinois and
8 Wedron and the other between Ottawa and Wedron.

9 After a long process, the Commission,
10 in March of 2009, adopted an order which approved
11 both transmission lines. The one that eventually was
12 adopted between Ottawa and Wedron, which is at issue
13 here today, was the result of a stipulation between
14 Ameren, the City of Ottawa and a group of property
15 owners along Illinois Route 71. They call themselves
16 the Route 71 Resisters.

17 The stipulation was arrived at
18 following a problem with Ameren's testimony that came
19 to light in the hearing in the prior December. To
20 resolve that, the three parties simply agreed to
21 change the preferred route of Ameren, which was the
22 route along Route 71 -- State Route 71, to a route

1 along the Fox River.

2 At the time, there was no one in the
3 case who opposed the Fox River route. So the
4 Commission entered an order adopting the Fox River
5 route, although on Page 65 of that order there was
6 some misgivings presented or expressed regarding
7 whether or not that truly was the best route given
8 the circumstances; but because of the stipulation,
9 the order did not delve into details or the pros and
10 cons, if you will, of the Fox River route versus the
11 State Route 71 route.

12 After the Commission entered that
13 order, some property owners and business owners along
14 the Fox River route became concerned. They indicated
15 that -- I can't vouch for whether it's true or not --
16 but they indicated that they were told by Ameren
17 prior to this case beginning that the Fox River route
18 would not actually be selected. They apparently
19 relied on that and when they did learn of the Fox
20 River route being selected and became concerned, they
21 raised some points about the existence of an airport,
22 which was not in the record beforehand. They raised

1 concerns about the Ameren privatization given that
2 the wooded area would have to be removed to
3 accommodate the transmission line.

4 In September of 2009, the Commission
5 voted to reopen the record to examine just the route
6 between Ottawa and Wedron. During that discussion,
7 then Chairman Box had asked me about what -- Would
8 you consider reopening? And I recommended that we
9 limit the consideration between the original primary
10 route or preferred route of Ameren, which was the
11 Route 71 path, and the route that was actually
12 approved in the order, the Fox River path.

13 So the Commission did not expressly
14 indicate, Limit yourself to these two paths. So I
15 interpreted that to mean that in the absence of any
16 further discussion on that issue, that we are to look
17 at these two particular routes and not consider any
18 other ones given the time delay that would be -- time
19 and expense that would be incurred to consider an
20 endless number of additional routes.

21 When we received the testimony from
22 the parties that wanted this reopened, Mr. Smith had

1 provided additional routes for us to consider. And
2 at a status hearing we had in December, I
3 indicated -- I believe it was December -- I indicated
4 that we would limit ourselves to the two routes that
5 had previously been considered, and we would not be
6 taking the time to look at additional routes.

7 So, in a nutshell, that's where we are
8 today.

9 COMMISSIONER O'CONNELL-DIAZ: Judge Albers,
10 with regard to the assertion that the alternate route
11 that is proposed by -- that's contained in the
12 Petition to Intervene of Mr. Smith, he talks about,
13 first, if -- this route was first and formally
14 proposed in the record in April of 2007 by the City
15 of Ottawa.

16 Could you enlighten me on that or was
17 it proposed and rejected or looked at or...

18 JUDGE ALBERS: Going simply from my memory
19 here, which that was a couple years ago, various
20 parties, by intervening, had expressed, you know,
21 different alternatives here and there and different
22 modifications to routes that had been proposed by the

1 Company. And I recall there being some -- that being
2 raised, but I can't recall with any particularity how
3 detailed that proposal was. It was simply, you know,
4 How about this kind of idea?

5 We did not notify any property owners
6 along that path. To my knowledge, there have been no
7 engineering studies done to determine, you know, the
8 legitimacy of any path there. And I think there's
9 some discussion or some concern expressed generally
10 in the record about trying to get a line between
11 Ottawa and Wedron and LaSalle -- LaSalle and Wedron
12 separate so as to avoid any problem -- any double
13 circuit where damage can take out essentially, you
14 know, both lines. And I believe that route was
15 raised in Mr. Smith's testimony. It basically ends
16 up being primarily a double circuit.

17 COMMISSIONER FORD: Judge Albers, I thought we
18 reopened it to reconsider the route between Ottawa
19 and Wedron.

20 JUDGE ALBERS: Yes. This is specifically
21 Ottawa and Wedron, the route between LaSalle and
22 Wedron heading east toward Ottawa and then cuts north

1 to Wedron. It is a separate and distinct line. And
2 I understand Mr. Smith's proposal though. I think he
3 is proposing that the line leave Ottawa and join the
4 line coming from LaSalle creating a double circuit
5 between the two as it heads up to Wedron.

6 COMMISSIONER O'CONNELL-DIAZ: Thank you.

7 COMMISSIONER COLGAN: Judge Albers, this is
8 John Colgan.

9 What my understanding is is that the
10 Fox River route has been a possibility, but I think I
11 heard you say that there were assurances that were
12 given that it would not be the preferred route; is
13 that -- did I hear you correctly?

14 JUDGE ALBERS: Well, I can't speak to that
15 because I wasn't a part of that; but it's my
16 understanding, from comments made by those who sought
17 reopening, that at the very initial stages of this
18 process, before it even came to the Commission,
19 Ameren allegedly told people in the Fox River area
20 that they had nothing to worry about.

21 Now, I can't vouch for that in any
22 way, shape or form; but that is what those who sought

1 reopening it allege, that they were told previously
2 that they would not see a line along the Fox River.

3 However, once the case came before the
4 Commission and the Fox River route was identified as
5 a possibility, Ameren provided a list of all property
6 owners along the Fox River route and those property
7 owners received a notice from this Commission
8 indicating that, we're looking at a single line along
9 here, if you are interested, you know, please
10 participate and nobody responded.

11 COMMISSIONER COLGAN: Well, this has been --
12 this has drug on for a while, and I haven't been on
13 board for that long a period of time; but it just
14 seems like there's been a lot of confusion that's
15 been generated, and do you have any recommendations
16 for -- regardless of how this turns out -- that we
17 can avoid such confusion in the future?

18 JUDGE ALBERS: We have taken steps in this case
19 to improve the notice to property owners to make it
20 even more exclusive, that you better get on board
21 early on or you are going to have concerns about
22 this.

1 My understanding of the notice that is
2 being currently used was updated to just come -- from
3 before us, and I'm getting a nod from Chief Clerk
4 Rolando that that is true, so we're trying to take
5 steps to prevent similar confusion in the future.

6 COMMISSIONER FORD: Good.

7 CHAIRMAN FLORES: Any other questions by the
8 Commissioners?

9 COMMISSIONER COLGAN: No.

10 CHAIRMAN FLORES: This is Manuel Flores. I
11 have a couple questions, Judge.

12 The -- was there ever any -- in terms
13 of the representation that Ameren is alleged to have
14 made to the folks along the Fox River, was there any
15 effort on the Commission's part to inquire about
16 whether or not -- or on your part, rather, the Staff,
17 to inquire to determine whether or not such
18 communication was made.

19 JUDGE ALBERS: Not to my knowledge.

20 CHAIRMAN FLORES: Was there ever any
21 presentation to you of any memorialized
22 communications between Ameren and anyone along the

1 Fox River that would indicate that such communication
2 took place?

3 JUDGE ALBERS: It is my understanding there was
4 oral communications that occurred at open houses that
5 Ameren posted to explain the project. I wouldn't
6 have expected it to be any written record.

7 CHAIRMAN FLORES: And you made a -- we just
8 heard remarks by Mr. Smith and I, again, want to
9 thank him for taking the time to appear before the
10 Commission to provide his comments.

11 You indicated, though, that you had --
12 when was it -- when was the first time that you
13 actually came upon Mr. Smith's recommendations or
14 suggestions.

15 JUDGE ALBERS: That would have been in the
16 December 15th, 2009 testimony.

17 CHAIRMAN FLORES: That was the first time that
18 you had been presented with any recommendations as to
19 an alternative?

20 JUDGE ALBERS: Well, I mean this is under
21 litigation. I can't -- well, I can't answer your
22 question. When this case first was filed in 2006,

1 people came in -- Ameren filed its primary route with
2 few alternatives. Other intervenors came in and
3 filed their alternatives and they indicated in
4 response to Commissioner O'Connell-Diaz's question --
5 they were a party that had joined saying, Hey, how
6 about this without really any kind of thorough
7 examination of the possibility. They were just
8 throwing ideas out there.

9 In terms of the specifics that
10 Mr. Smith had made, he intervened in this case this
11 fall -- in the fall of 2009 and filed testimony. The
12 first oral presentation on his position was not
13 received until December 15th of this year -- I'm
14 sorry -- of 2009. So his position was not known
15 until then.

16 COMMISSIONER O'CONNELL-DIAZ: And, Judge
17 Albers, what you're suggesting is that this
18 alternative route that is spoken about -- and my
19 question went to with regard to the Petition of
20 Interlocutory Review -- it talks about April 27th and
21 it was informally proposed. What you're talking
22 about is the actual party to the case filing a

1 proposed alternative route that would analyze all of
2 the necessary requirements of that line to be
3 profitable engineering-wise and have supporting
4 documentation.

5 And what you have -- I think I
6 understand you had said that that had never been
7 presented in the case by anyone other than on this
8 informal basis and until November of this year. Is
9 that a fair assessment of -- we can't find any
10 testimony or analysis done on this particular line in
11 the record.

12 JUDGE ALBERS: Right. When I said parties had
13 formally proposed alternatives, they were actually a
14 party to the case that proposed informal appropriate
15 alternatives. They were not accompanied by any, you
16 know, serious studies or views. It was merely
17 references that the Committee on -- the Commission or
18 the Company should consider, you know, putting a line
19 here, putting a line there without any type of
20 engineering studies, without doing any kind
21 environmental assessment.

22 The first time that we had received

1 any evidence regarding any serious proposal to put
2 the line where Mr. Smith has proposed was back in his
3 actual testimony. He -- to his credit, he took some
4 time to do this. I cannot vouch for the -- you know,
5 the validity of his review. It not been, you know,
6 subject to any other party's cross or, you know,
7 discovery requests unless they found serious
8 problems. I just can't -- one way or the other.

9 But the first time we got a serious
10 proposal of any level of review for this hearing,
11 this geographic area, was Mr. Smith's December 2009
12 testimony.

13 COMMISSIONER O'CONNELL-DIAZ: And it's been
14 pending since 2006; correct?

15 JUDGE ALBERS: November 6th, '06, that was
16 filed, November 1 of '06.

17 COMMISSIONER FORD: And you also said that none
18 of the property owners along Fox River intervened.

19 Is that part --

20 JUDGE ALBERS: That is correct. Notice was
21 sent when we first thought about using that Fox River
22 route -- probably a year and a half ago at least --

1 and nobody intervened. And that -- it is my
2 recommendation today that we restrict consideration
3 to the existing Fox River route or the originally
4 preferred Route 71 in large part because of all the
5 time that we've already spent on this case and, two,
6 we're already giving these folks on the Fox River a
7 second chance.

8 And it's not so much giving them a
9 second chance; but I believe in order to make sure
10 that whatever route we use between Ottawa and Wedron,
11 it is the best possible route given the 12 factors
12 that are usually considered. And I believe if we
13 expand it to alternative routes beyond these two,
14 we're going to be spending a lot more time on this
15 case and they come back in --

16 COMMISSIONER O'CONNELL-DIAZ: Judge Albers --

17 JUDGE ALBERS: -- and, say --

18 COMMISSIONER O'CONNELL-DIAZ: -- is there a
19 liability issue with this line not being up and
20 running at this point in time?

21 JUDGE ALBERS: Ameren has expressed some
22 concerns about not wanting to delay it any more than

1 they have to. You know, obviously the longer you
2 wait, the higher the chances are going to get -- but
3 I think Ameren would like to get this, you know,
4 done. I can't tell you with any certainty what
5 percentage chance there is of an accident or
6 outage --

7 COMMISSIONER O'CONNELL-DIAZ: I know in some of
8 the situations that the Commission has been presented
9 with in regards to transmission lines, we have
10 instances where there will be brownouts. And so that
11 would certainly be a concern, but that does not seem
12 to be a matter of record at this point in this
13 particular proceeding.

14 JUDGE ALBERS: I don't think we're there yet.

15 CHAIRMAN FLORES: Judge, you indicated that
16 Route 71 -- that it was between -- that the scope now
17 of -- the analysis has been -- in terms of the two
18 alternatives has been narrowed to the Fox River and
19 Route 71. It's been -- and correct me if I'm
20 incorrect here. In summarizing what you just
21 indicated earlier, that it was determined there was
22 some evidence that was presented before you that the

1 Fox River run -- excuse me -- the Fox River line
2 presented some problems and that then the other --
3 the only other alternative -- viable alternative
4 would be Route 71; is that correct?

5 JUDGE ALBERS: Yeah. I don't want to say it
6 was the only other viable alternative; but given
7 what's already in the record, it is the only other
8 viable alternative, you know, if we expand the record
9 based on the alternatives with -- but what we have
10 before us now is either Route 71 or the Fox River and
11 because of some concerns about the Fox River that
12 were raised after the order was entered in March, I
13 recommended that this matter be reopened to take a
14 look at those concerns.

15 CHAIRMAN FLORES: All right. Well, then the --
16 I have no other questions.

17 COMMISSIONER FORD: Mr. Chairman, I would move
18 that we accept the ALJ's recommendations.

19 CHAIRMAN FLORES: Is there a second?

20 COMMISSIONER O'CONNELL-DIAZ: Second.

21 CHAIRMAN FLORES: It's been moved and seconded.

22 All in favor say "aye."

1 (Chorus of ayes.)

2 CHAIRMAN FLORES: Is there -- I'm sorry. I
3 didn't hear Commissioner Elliott.

4 COMMISSIONER ELLIOTT: Aye.

5 CHAIRMAN FLORES: Okay. The vote is 5-0. The
6 Petition for Interlocutory Review is denied.

7 COMMISSIONER O'CONNELL-DIAZ: Just to clarify.

8 Judge Albers, have we clarified enough
9 that now the analysis should be based on the Route 71
10 versus the Fox River Valley route so that that is --
11 for the rest of the proceeding, that that's what the
12 Commission will be looking at?

13 Is that --

14 JUDGE ALBERS: That's my understanding.

15 COMMISSIONER O'CONNELL-DIAZ: Okay. Thank you.

16 CHAIRMAN FLORES: I do want to -- hold on,
17 Judge, Manny Flores here. I do want to make another
18 statement regarding this case at this point.

19 The communication is critical. So I
20 would advise that the Staff and the Commission
21 undertake every effort to ensure that people are
22 properly notified. I am troubled by an allegation

1 that was made -- in terms of representations that
2 were made.

3 Now, I asked whether or not there was
4 ever anything tendered, any type of memorialized
5 document, an e-mail or anything of the sort. You
6 indicated there hasn't been. So that's an
7 allegation. That being said, this is a very serious
8 matter and one where I believe community engagement
9 and community notice is critical.

10 I believe that one of the reasons why
11 we're here is ultimately because of some confusion as
12 to representations made or at least understandings or
13 potential misunderstandings. I want to avoid that.
14 I think everyone wants to avoid that to ensure that,
15 A, the public is properly notified and informed about
16 what's going on and how they can engage in
17 decision-making; and then, secondly, to ensure that
18 the projects move forward as expected by individuals
19 involved in the project.

20 So I would just like to put everyone
21 on notice, including Ameren, to ensure that proper
22 communications are made and that it would be best to

1 put things on paper and so -- to make sure that we
2 all understand what to expect from one another and
3 how we can all participate in this decision-making
4 process.

5 COMMISSIONER O'CONNELL-DIAZ: Chairman, if I
6 may, I totally agree with what you say and
7 communication is very key. However, I would just
8 note that when the Commission is presented with these
9 matters and the formal notice goes out from our
10 Clerk's Office, it is a legal notice that is given to
11 landowners. And, certainly, it is incumbent upon all
12 of us that would be affected by this line that when
13 we see something like that to really understand the
14 severity and to do what we are supposed to do as
15 citizens that are going to be affected by a
16 proceeding that's going on here.

17 So the due notice that was sent and
18 required by law and that was sent by our Clerk's
19 Office, folks need to understand that they do not put
20 that in the bottom of the dresser drawer, that they
21 need to act on it and come to our Commission to act
22 so that we, the Commission, get that full record

1 developed in a timely fashion and are -- you know, be
2 able to consider all of these arguments.

3 And I know it can be daunting; but,
4 obviously, with regard to this line, there has been a
5 lot of collaboration among different interest groups
6 and that's what happens in these. I mean, your
7 neighbors all get involved and that's what's great
8 about our country, you can do that; but you do need
9 to -- when you get a notice from the Commission, you
10 need to say, Boy, I better pay attention to that.

11 So that would be my only caveat to
12 your comment.

13 CHAIRMAN FLORES: I think that's a good point;
14 but, again, I just want to make sure that --
15 sometimes things happen, as you know, Commissioner,
16 that people may not understand a lot of the legal
17 jargon that sometimes we receive in the mail.

18 I would also -- and I also make,
19 frankly, that comment to ensure that Ameren in its
20 efforts to communicate with the public, that they do
21 so with the highest level of professionalism. I know
22 they do good work out there; but, again, it's

1 incumbent upon all of us to communicate in a way
2 where we all understand each other. And -- so that
3 also goes to all the parties and not just the
4 residents; but, again, I want to thank everyone who
5 took time from their busy schedules to be here, and
6 we obviously will be moving forward with this matter.
7 So thank you.

8 Items 2, 3 and 6 and 7 will be taken
9 together. These are applications for uncollectible
10 expense adjustment tariffs submitted by various
11 utilities pursuant to 16-111.8 of the Act.
12 Administrative Law Judges Yoder and Albers
13 recommended entering the orders granting the
14 applications.

15 I want to open up any discussion to
16 the Commissioners.

17 COMMISSIONER O'CONNELL-DIAZ: Chairman, if I
18 might, I support the recommendation that's contained
19 in the orders presented to us by the Judges.

20 However, I did have an opportunity to
21 go through the "Public Comments" section on our Web
22 site and what became clear to me as I read through

1 the public comments is that there is really kind of a
2 misunderstanding as to how we, in fact, have
3 petitions like this before us at the Commission.

4 These -- this particular provision was
5 enacted by the General Assembly in its last year's
6 session and it became law and when an item such as
7 this becomes law, it becomes incumbent upon this
8 Commission to implement that law. It is not a
9 discretionary act we have. It is not our choice to
10 ignore it. It is our duty and our obligation to
11 really exercise the will of the General Assembly.

12 And that is why the Commission has
13 these petitions and it is our job to look at them and
14 review them and see if they comply with the law as
15 enacted by the General Assembly and so, you know,
16 this is not something that the Commission just is
17 asking these companies to file or -- this is what the
18 law requires them to do and it requires us to look at
19 it.

20 So I just wanted to clear that piece
21 up as to how the Commission actually gets a petition
22 such as this. This is pursuant to law and it is this

1 Commission's job to implement the law as the
2 legislature deems appropriate.

3 CHAIRMAN FLORES: Any other comments?

4 COMMISSIONER FORD: No.

5 Other than also pursuant to law, we
6 must have testimony and we seem to have 111 --- 110
7 individuals comment and out of those 110 comments,
8 only 7 was saying something like strongly opposed to
9 what they thought was paying somebody else's bill.
10 So I thought that was very -- those were excellent
11 comments, those comments.

12 CHAIRMAN FLORES: Any other comments?

13 Again, as both Commissioners
14 indicated, that we are also grateful for the comments
15 that were sent to the Commission and that we are
16 talking about here, an administrative aspect and
17 we're -- in which this Commission is charged by law
18 to implement and exercise via the will of the
19 legislature.

20 And so on that end, I'd like to -- do
21 we hear a motion to adopt the applications for --

22 COMMISSIONER FORD: So moved.

1 CHAIRMAN FLORES: Is there a second?

2 COMMISSIONER COLGAN: Second.

3 CHAIRMAN FLORES: All in favor say "aye."

4 (Chorus of ayes.)

5 CHAIRMAN FLORES: So none of the -- we don't

6 have any opposition.

7 Very well. I'd like to move on to --

8 well, we're going to use the 5-0 roll call vote for

9 the remainder of the agenda unless otherwise noted.

10 We're moving on to Item 4, which is Docket 09-0514.

11 This is Progressive Energy Group, LLC, has applied

12 for an agents, brokers and consultants license under

13 Section 16-115C of the Act.

14 Administrative Law Judge Yoder

15 recommends entering the order granting the

16 certificate.

17 Is there any discussion?

18 No response.

19 Any objections?

20 No response.

21 Hearing none, the order is entered

22 granting the certificate.

1 Item No. 5 is Docket 08-0175. This is
2 a request for oral argument in a complaint by the
3 Citizens Utility Board and AARP against U.S. Energy
4 Savings Corp.

5 Administrative Law Judge Gilbert
6 recommends granting the request for oral argument.

7 Judge Gilbert, would you please brief
8 us on this matter.

9 JUDGE GILBERT: Certainly, Chairman.

10 The parties to the case, CUB and AARP,
11 the American Association of Retired Persons, and the
12 respondent, which is U.S. Energy -- which is an AGS
13 or an alternative gas supplier -- a certificate to
14 provide transfer of gas services in the service
15 territory, so Peoples Gas, North Shore Gas and Nicor.
16 All of the formal allegations in the case arise from
17 consumer complaints. These were consumer complaints
18 received by the respondent itself, by this
19 Commission, by the Better Business Bureau, by CUB, by
20 the Attorney General, by the City of Chicago and this
21 is during the period from the 1st of January 2007 to
22 the end of March 2008.

1 The complaints generally coalesced
2 around four subjects that -- well, I should say
3 first -- I'm sorry -- U.S. Energy markets gas service
4 almost exclusively by door-to-door selling and the
5 only gas provider that does and they principally rely
6 on door-to-door selling. So the complaints, as I
7 said, kind of clustered around four subjects.

8 One is that savings were promised that
9 were very unlikely under the U.S. Energy service
10 contract and their service contract contains a fixed
11 price for gas. So unlike what the incumbent
12 utilities provide, which is a price that fluctuates
13 based on the cost of that gas to the provider, U.S.
14 Energy offers a contract which has a fixed price over
15 a period of four or five years. And so the promise
16 of savings, which the record demonstrates was a very
17 unlikely promise, was probably the most common
18 complaint from customers.

19 The second cluster of complaints
20 concern misrepresentation of identity on the part of
21 the salespersons at the door, that there was -- they
22 claim to be from the utility rather than from an

1 alternative provider, they claim to be from this
2 Commission, they claim to be from CUB -- well, I
3 guess that point is made.

4 The third cluster of complaints had to
5 do with the nature of the visit. In certain
6 instances, salespersons did not present themselves as
7 salespersons, but rather as people taking a survey,
8 as persons from the utility offering to make a new
9 arrangement -- a new service arrangement for the
10 customer in which they would purportedly save money.
11 So that third cluster has to do with misrepresenting
12 the nature of the visit at the customer's door.

13 The fourth cluster will be generally
14 considered unauthorized switching of service, either
15 slamming a customer or forging a customer's name on a
16 customer contract. All right.

17 So those generally are the four
18 clusters of complaints which gave rise to the formal
19 complaint by CUB and the AARP here and I am
20 explaining how the complaint was formally shaped.
21 Principally it's couched in terms of violations of
22 the AGS or the alternative gas supplier law.

1 Section 19.110 of that law is
2 basically the certification portion of the law that
3 sets out the requirements to be certified. Two of
4 those requirements are important here. One is that
5 an applicant must show in the beginning that they
6 have sufficient management, resources and abilities.
7 Another thing that they must swear to do is to comply
8 with all the laws applicable to the provision of
9 service, it's a function they intend to perform in
10 the marketplace.

11 And Section 19.115 of the law
12 essentially says that all the things you promised to
13 do when you were certified under Section 19.110 --
14 all those things you have to continue doing. All
15 right.

16 So this complaint was basically
17 couched in terms of failing to continue to do that
18 which they originally promised to do and/or were
19 required by law to continue to do. The main count in
20 the case has to do with failure to maintain
21 sufficient management and the principal symptom of
22 the failure to maintain sufficient management was the

1 occurrence of an onslaught, really, of customer
2 complaints.

3 It was alleged and I think the record
4 demonstrates that the amount of customer complaints
5 received relative to U.S. Energy during the time
6 period of the case exceeded not only the amount of
7 complaints received by any other gas provider, but by
8 all other gas providers combined. Because of the
9 requirement that an AGS must continue to comply with
10 all applicable laws, the complaint also included
11 counts under the Consumer Fraud Act and Deceptive
12 Trade Practices Act, the CFA and the DTPA.

13 In addition, there were counts having
14 to do with some other very specific provisions in
15 Section 9.115 of the law, one being the requirement
16 to always have verifiable authorization before you
17 switch a customer from one provider to yourself and
18 another being a requirement to always provide
19 adequate prices for them.

20 All right. In the proposed order in
21 terms of substantive conclusions, on the management
22 question, which I'll call the big picture question

1 because that's dealing with complaints in the
2 thousands, the finding is that there was management
3 insufficiency and there was that insufficiency
4 throughout the entire 15-month period and then
5 essentially rose rather than fell during that period.
6 In fact, U.S. Energy's own -- I think he's the vice
7 president of regulatory affairs -- it's probably a
8 slightly different title than that -- called the
9 degree of complaints they received a crescendo by
10 March -- by February-March, I should say, of 2008.
11 All right. So, yes, on the big picture count.

12 On the smaller counts -- and I call
13 them smaller because of the way I had to address
14 those -- the proposed order finds 8 to 10
15 violations -- 7 to 10 violations -- fewer than 10
16 violations of the CFA, Consumer Fraud Act, and the
17 DTPA, the requirement to obtain verifiable
18 authorization before switching and the requirement to
19 adequately disclose your prices. The reason that
20 there are a relative handful of those is because this
21 Commission cannot directly enforce either the CFA or
22 the DTPA. What you are enforcing is the provision in

1 the Public Utilities Act that says you must comply
2 with applicable law.

3 So I took the position in drafting the
4 Proposed Order that that required not just a
5 complaint or allegation, but an actual finding of a
6 violation and the record evidence in the case showed
7 a violation of fewer than 10 instances in connection
8 with the CFA and the DTPA.

9 All right. On all of this, I think
10 the record is pretty complete. I felt pretty
11 comfortable with what I did. I mean, either I'm
12 right or I'm wrong; but I think there's enough there
13 that as a documentary presentation, you can make the
14 call on the oral argument -- I mean, without oral
15 argument.

16 The question to me is the question of
17 remedies, and I think this is what the consumer
18 groups want to address on oral argument. I'd
19 recommend that you impose some monetary penalties.
20 Those are one kind of penalty the law permits you to
21 impose and that seemed fairly straightforward to me.
22 For each individual violation, you are empowered to

1 impose up to a \$10,000 fine. It was fairly easy to
2 count up the violations, decide what portion of the
3 10,000 was appropriate and make a recommendation to
4 you.

5 Where it's gotten difficult for me,
6 where I feel I'm a bit, I think, over my pay grade
7 here is deciding on the other kinds of functional
8 remedies to apply. Our time is short here. The case
9 ends on February 25th. It has been extended six
10 times as a provision by which a complaint case can be
11 extended for a 60-day interval that is set forth in
12 the law and on six occasions the parties extended it
13 and then they stopped.

14 Frankly --

15 COMMISSIONER O'CONNELL-DIAZ: Were they trying
16 to settle the case?

17 JUDGE GILBERT WITNESS: Yes. There was a
18 long -- at least a 6-month hiatus in the case while
19 the parties considered settlement, and I must say
20 that I absolutely pushed that up and thought that
21 would have been the best outcome for everyone; but
22 settlement was not achieved. The Company is no

1 longer willing to extend the case. So the --

2 COMMISSIONER O'CONNELL-DIAZ: Didn't they kind
3 of waive that by letting us sit here for six months
4 while they did the settlement dance?

5 I mean, we afforded them that time to
6 work it out and now we're going to be put up against
7 the wall to decide this by the 25th of February. I
8 find that kind of troublesome.

9 Obviously, that was a joint motion by
10 CUB and the Company to ask for all of these
11 extensions and --

12 COMMISSIONER FORD: Was that agreed to by the
13 Circuit Court to -- with the AG and Direct Energy?

14 Aren't they under consent decree?

15 JUDGE GILBERT: Yes. Yeah, which has been part
16 of what I've had to think about with respect to
17 remedies. The AGS law itself was revised in April of
18 this year. U.S. Energy was sued by the Attorney
19 General for violations of the CFA and they entered
20 into a consent decree. As part of that decree, they
21 established a \$1 million reparations fund and agreed
22 to a certain number of constraints and requirements

1 for the business practices.

2 COMMISSIONER O'CONNELL-DIAZ: Where did that

3 \$1 million go?

4 JUDGE GILBERT: I'm sorry?

5 COMMISSIONER O'CONNELL-DIAZ: Where did that

6 \$1 million reparation -- who received that?

7 JUDGE GILBERT: As I understand it, that was to

8 be returned to customers. There was a procedure set

9 up by which customers could seek returnment of that

10 money.

11 COMMISSIONER FORD: But under -- did they give

12 us, the Commission, the power to act on all of these

13 requirements?

14 So I guess I'm a little confused on

15 why we -- the consent decree gave us this award --

16 what did --

17 JUDGE GILBERT: The consent decree doesn't give

18 the Commission any authority.

19 COMMISSIONER FORD: Okay. Authority.

20 JUDGE GILBERT: It's an agreement between --

21 COMMISSIONER FORD: I see now.

22 The law.

1 COMMISSIONER ELLIOTT: Was there an admission
2 of guilt?

3 JUDGE GILBERT: No, there was not.

4 COMMISSIONER ELLIOTT: Thank you.

5 JUDGE GILBERT: In fact, there's an express
6 statement in the consent decree that liability is
7 denied.

8 COMMISSIONER ELLIOTT: So there's been no
9 findings of violations of the CFA from that consent
10 decree?

11 JUDGE GILBERT: Yes, that's correct.

12 COMMISSIONER ELLIOTT: Thank you.

13 COMMISSIONER O'CONNELL-DIAZ: Judge Gilbert, it
14 wasn't clear to me, and I don't remember; but has the
15 Commission had other complaints brought to it with
16 regard to this particular provider?

17 JUDGE GILBERT: Yes they're individual
18 complaints. This wasn't really part of our formal
19 record. I did take a look --

20 COMMISSIONER O'CONNELL-DIAZ: Has CUB brought
21 us any other complaints?

22 JUDGE GILBERT: Yes. In 2006 CUB brought a

1 complaint much like the present complaint.

2 COMMISSIONER O'CONNELL-DIAZ: And what
3 transpired in that matter?

4 JUDGE GILBERT: The parties settled that.

5 COMMISSIONER O'CONNELL-DIAZ: Were there
6 monetary funds exchanged in that, do you know?

7 JUDGE GILBERT: I don't know. That settlement
8 is not part of the record. I know one of the things
9 that resulted from that settlement -- and this is
10 discussed in the record -- is that persons with
11 service contracts with U.S. Energy were entitled to
12 void those contracts. Beyond that, I guess I don't
13 know how that resolved.

14 COMMISSIONER O'CONNELL-DIAZ: So, in that
15 instance, the Commission would have gotten an agreed
16 upon stipulation that we really never ruled on the
17 bad practices of this company; is that --

18 JUDGE GILBERT: Yes, that would be correct.

19 COMMISSIONER O'CONNELL-DIAZ: Were all the
20 other consumer complaints -- were those individual
21 consumers that filed and those were all settled so we
22 never really -- the Commission was never presented

1 with the totality of what we see in this proceeding?

2 JUDGE GILBERT: Yes, that's right. I would say
3 that maybe 17 or 20 and that's approximate -- 17 or
4 20 were settled and 3 were resolved in favor of the
5 Company.

6 COMMISSIONER O'CONNELL-DIAZ: Thank you.

7 JUDGE GILBERT: Those were all on individual
8 complaints.

9 COMMISSIONER COLGAN: Judge, the way I
10 understand your Proposed Order is that you feel there
11 is sufficient evidence to demonstrate that they're in
12 violation of the CFA and the DTPA and then, also, I
13 hear you say that this Commission has no authority to
14 enforce those laws; but there is enough evidence, you
15 believe, to demonstrate that they're in violation of
16 those laws to the extent that it brings them into
17 noncompliance with their certification.

18 Is that what your argument is.

19 JUDGE GILBERT: Yeah. That's very close to --
20 yeah, to what the position is I am taking in the
21 Proposed Order. To be clear, it's not that the CFA
22 and DTPA violations cannot be penalized, it's just

1 the penalties available are the penalties set forth
2 in the Public Utilities Act, not the penalties of the
3 CFA or DTPA and --

4 COMMISSIONER O'CONNELL-DIAZ: That would be the
5 court of general jurisdiction would be looking at
6 those violations, not the Commission. We don't have
7 jurisdiction over that.

8 COMMISSIONER ELLIOTT: That was my next
9 question from here is that have we ever, as a body,
10 ruled on CFA or DTPA.

11 JUDGE GILBERT: Yes, you have.

12 COMMISSIONER ELLIOTT: Could you -- is there a
13 reference in the record?

14 JUDGE GILBERT: Yes. One of the cases is a
15 case that I did -- it's a 2000 case -- it's
16 Docket 00-0043 -- and the same reason was applied
17 there. In order to determine whether a certificated
18 entity is meeting its obligation to comply with all
19 applicable law, you've got to interpret the
20 applicable law; but you cannot apply the penalties
21 contained in that law, you can only apply the
22 penalties associated with failing to meet your

1 obligation to this Commission.

2 COMMISSIONER O'CONNELL-DIAZ: That was my point
3 in my jurisdictional question. We can't impose
4 penalties that a court of general jurisdiction under
5 the Consumer Fraud Practices Act could impose; but we
6 can impose our own penalties based on the alternative
7 gas supplier legislation under which operate --

8 JUDGE GILBERT: Yes.

9 COMMISSIONER O'CONNELL-DIAZ: -- that's a
10 different bailiwick?

11 JUDGE GILBERT: Yes.

12 COMMISSIONER ELLIOTT: Judge Gilbert, referring
13 back to that case -- I'll rely on your memory -- but
14 was -- in that case, had the party been found in
15 violation of the CFA in another jurisdiction?

16 JUDGE GILBERT: Let me make sure that I
17 understand the question.

18 COMMISSIONER ELLIOTT: Had the Attorney General
19 found them noncompliant with the CFA and you ruled on
20 a basis of that finding or you made a ruling that
21 there was a violation without a finding of some other
22 jurisdiction?

1 JUDGE GILBERT: No, we made our own ruling
2 here.

3 COMMISSIONER ELLIOTT: Okay. Thank you.

4 JUDGE GILBERT: In fact, the Company was
5 Ameritech and, yeah, there had been no action by the
6 Attorney General.

7 In any event, I'll just pick up the
8 trail where I left off unless there are --

9 CHAIRMAN FLORES: I think I have a question.

10 JUDGE GILBERT: Sure. Sorry.

11 CHAIRMAN FLORES: We started out with a
12 question that, frankly, was never answered and that
13 is a question that Commissioner O'Connell-Diaz posed
14 in terms of the parties -- whether or not the parties
15 have waived and by virtue of them taking up so much
16 time in the settlement discussions and then now the
17 Commission finds itself in a position where it has to
18 make an important decision in a truncated time
19 period.

20 So what is your answer to that
21 particular question.

22 JUDGE GILBERT: I don't know. I'm not sure how

1 the consent of waiver would necessarily apply here.

2 CHAIRMAN FLORES: Or does it toll it?

3 Is there some type of tolling
4 provision that can -- I know that -- I think it's an
5 important question, and I understand that maybe you
6 do not have an answer here; but I think it's an
7 important point because here the Commission is going
8 to be deciding on an important case.

9 There have been a number of references
10 made to this case being one of first impression and
11 the parties entered into a protracted settlement,
12 which it appears we encouraged that to some extent
13 when the parties acted in good faith; but taking up
14 so much time and then leaving us in abeyance and then
15 all of a sudden assuming and then expecting that this
16 be decided in a very short time frame, you know, I
17 think it's a valid question, and I would hope that
18 someone -- obviously, you know, I'd like to have that
19 answered.

20 Another question I have for you is the
21 references made to this being the case of first
22 impression, let me just start off by first asking, do

1 you believe that this case is one of first
2 impression?

3 JUDGE GILBERT: I guess I believe it's a case
4 of first and a half impression.

5 CHAIRMAN FLORES: That is where I was getting
6 to. So to help us refine the issues further, what
7 would -- what, in your opinion, makes this a case
8 of -- how did you describe that?

9 COMMISSIONER FORD: First and a half?

10 JUDGE GILBERT: First and a half.

11 CHAIRMAN FLORES: You know, what are the issues
12 here that really are -- what would you consider to be
13 the novel issues in the case of -- the issue of first
14 impression for this -- before the bench?

15 JUDGE GILBERT: Well, first, let me tell you
16 what was addressed.

17 There's a previous case in 2002
18 involving Santana Gas, and that case procedurally was
19 a little different because they were already doing
20 business. Along came the AGS law that required them
21 to be certified. So they came back and asked for
22 certification. And in the time they had been doing

1 business, they had also generated an inordinate
2 number of complaints.

3 And so those complaints were brought
4 to the Commission as an example of why Santana lacked
5 management sufficiency required by the Act. And what
6 the Commission concluded was that gas complaints are
7 a very serious matter. The complaints, according to
8 the record, appeared to be tapering off. Santana had
9 committed to some reparative measures and even then,
10 although you did grant certification, you imposed a
11 number of conditions including the requirement to
12 present a recovery plan -- a legal compliance plan
13 that would recover from the prior noncompliance and
14 some other qualifications as well.

15 Now, that was eight years ago and that
16 was right after the AGS law had been introduced.
17 There's been a lot more activity in the market since
18 then and there are a lot more alternative providers
19 and now you have a company that is in a somewhat more
20 seasoned market. I think there's still confusion in
21 the marketplace about what it means to take service
22 among alternative gas suppliers.

1 That said, I think the context now is
2 different and I think an entity that failed in 2007
3 or 2008 or that needs remedy in early 2010 can be
4 treated differently than the Company that was already
5 doing business at the time of the AGS law, suddenly a
6 law comes into effect and they now have to backtrack
7 and figure out how to comply with that.

8 So that's why I'm saying it's kind of
9 a one-and-a-half -- it's kind of one-and-a-half first
10 impression. I think it's a different ball game now
11 than it was back then. Also the law has been changed
12 and the law going forward has been changed. Going
13 forward from our case -- because remember our case
14 ends in March of '08 and the AGS law changed in April
15 of '09.

16 In part -- and this is my
17 supposition -- I don't know this -- but, in part, I
18 believe the AGS law was changed because of U.S.
19 Energy -- because there was never a reference to
20 door-to-door selling in the old AGS law. The law is
21 much more dense and expanded now with a lot of very
22 minute requirements and prohibitions that weren't in

1 the previous law, and I think many of these have to
2 do with problems with door-to-door sales.

3 COMMISSIONER FORD: They got a lot of publicity
4 because, actually, it was going to minority
5 communities and the television stations and there was
6 a lot of deception and I think that is a part of why
7 we wanted that law changed.

8 JUDGE GILBERT: Yes. Again, I don't know --

9 COMMISSIONER FORD: I looked on the television
10 and saw it. No, I know for a fact that they did prey
11 on minority communities.

12 JUDGE GILBERT: Yeah, and the position that the
13 consumer groups have taken in the case is just that,
14 one of the reasons for the complaints was the focus
15 on elderly consumers, on minority consumers, on
16 consumers who did not speak English as a first
17 language.

18 COMMISSIONER COLGAN: Does the record indicate
19 that there are other alternative gas suppliers that
20 do door-to-door sales?

21 JUDGE GILBERT: The way that the record
22 reflects this is that no one else primarily relies on

1 door-to-door sales. That's the phrase that keeps
2 coming up in the record. My sense is that no one
3 really -- no one else really does it. So I do note
4 in 2002 apparently Santana Gas did some of that.
5 That's one of the things mentioned in the Order from
6 2006.

7 COMMISSIONER FORD: I think it was a narrow
8 line under the Commission's Order.

9 CHAIRMAN FLORES: Any other questions?

10 COMMISSIONER ELLIOTT: Judge, are you going to
11 be filing your Post-Exception Order?

12 JUDGE GILBERT: Yeah. In fact, if it weren't
13 for the remedies question, I would have had it done
14 already. I mean, everything else is done. I'm up
15 late at night trying to figure out what remedies make
16 sense and in part because of the short time of the
17 case, I mean, being frank about it.

18 If you folks feel like this is the
19 time for strict enforcement and I write a lenient
20 order, do we have time to recover from that and,
21 conversely, if you folks are feeling like you want to
22 give these -- this particular provider some space --

1 and I've written something that's fairly strict -- do
2 we have time to write a new order to recover from
3 that?

4 Which is why I'm hoping -- even
5 through this process -- to have some sense of what
6 the Commission's point of view is because penalties
7 other than -- well, in fact, even the monetary
8 penalties are ultimately a policy question and the
9 kinds of remedial measures that you might require
10 really are policy questions. And I talk -- do you
11 want to stop door-to-door selling? Do you want to
12 revoke their certificate or modify it or suspend it?
13 Do you want to do nothing because there's a
14 settlement agreement with the Attorney General which
15 would subject them to contempt of the Circuit Court
16 if they violate it and because of the new AGS law?
17 Do you want to open a new docket? Do you want to
18 close this docket with an Order now.

19 CHAIRMAN FLORES: But, Judge, that's why I
20 believe that we need to have that question answered
21 with regard to timing, because I do believe that it
22 really puts this Commission in an awkward position at

1 this point then to provide for some substantive
2 recommendations that this case merits.

3 And, you know, what I would hope is
4 that parties did not use the settlement procedure to
5 game the system as a way to put this Commission in an
6 awkward position, then to have them scramble at the
7 11th hour to provide for substantive policy
8 recommendations because I will tell you, I have a
9 number of concerns, one of which Commissioner Ford
10 just indicated with regards to the record that I read
11 about also the way that certain communities appeared
12 to have been targeted and then that opens up a whole
13 bunch of other, you know, policy questions and
14 considerations.

15 With regards to, you know, how do we
16 treat the remedy section, you know, I have a number
17 of ideas and recommended suggestions; but I'm sure
18 each one of the Commissioners here also has her or
19 his own recommendations and ideas and, frankly, we're
20 going to need some time to vet these ideas and to be
21 thoughtful in order to make sure that we reach the
22 right decision.

1 So I -- you know, I know it puts you
2 in a tough bind because you have to put together the
3 Order and you have to also provide a response to --
4 you have to provide another -- you have the
5 Post-Order Exception -- a Post-Exception Order --

6 COMMISSIONER O'CONNELL-DIAZ: Judge Gilbert,
7 where was the conversation that took place that the
8 Company was not going to be in agreement with doing
9 another 60-day extension?

10 Is that on the record anywhere?

11 JUDGE GILBERT: Yeah, I believe it's -- there
12 probably would not be a conversation in the way that
13 you are suggesting.

14 COMMISSIONER ELLIOTT: Is there a way that you
15 can go back to the parties and suggest that the
16 Commission would certainly entertain or request an
17 extension?

18 JUDGE GILBERT: Well, I could certainly do that
19 if that's what you want me to do.

20 COMMISSIONER O'CONNELL-DIAZ: Well, I mean, I
21 think that makes the Commission look a little
22 subservient. Number one, there obviously was an

1 agreement between the parties at many points during
2 the progress of this case to extend time. At that
3 point in time there was an agreement by the
4 petitioner as well as the defendant company. It put
5 our Commission in a bind that we did not really have
6 the case before us at that point in time.

7 So I find it extremely difficult to
8 understand that we would be put up against a wall.
9 So what would logically happen? They would go to the
10 Circuit Court and get a Writ of Mandamus because the
11 Commission did not enter the order? Have a nice
12 time. The Commission is still doing its work. This
13 is a serious matter that has consumer interest
14 written all over it. It is our job to move this case
15 forward.

16 The only reason this case was not
17 going forward was because we afforded -- by agreement
18 of the parties. It should have been made part of the
19 record. That should have been on the record. It
20 should have been, Okay, if we're doing this here,
21 there's going to be time to pay for this at the end
22 and the Commission is not going to be put in a

1 situation that we don't have the time with the matter
2 when they have sat on their laurels trying to do a
3 settlement.

4 So, you know, I really don't think
5 it's appropriate that we have to go back and ask
6 permission of this company to -- after I read this
7 record, I'm not thinking real great about. So I
8 don't like us being put in that position. So I guess
9 our General Counsel Office will have to advise us as
10 to this issue that has been raised.

11 MS. STEPHENS-SCHROEDER: Commissioner, we do
12 have a special legal assistant that would be happy to
13 answer all of your legal questions -- and we are
14 looking into some of the matters -- and take a
15 thorough look and advise you.

16 CHAIRMAN FLORES: Counsel -- I'm sorry. I was
17 going to refer to you as corporation counsel.

18 Where are we at though with regards to
19 timing? Because it seems we may have to enter some
20 type of an order calling for some type of an
21 extension. So I want to make sure that --

22 JUDGE WALLACE: Mr. Chairman?

1 CHAIRMAN FLORES: Yes, sir.

2 JUDGE WALLACE: This is Judge Wallace in
3 Springfield. I think we could handle this without --
4 and having extra time to work on this.

5 CHAIRMAN FLORES: That may -- okay. Well, then
6 let me just make a recommendation, though, that, you
7 know, when we talk about extra time here, we're not
8 talking about two or two days and I suspect that
9 we're not talking about either an -- an extra week,
10 we're looking for -- I would recommend at least a
11 month.

12 COMMISSIONER O'CONNELL-DIAZ: I think we would
13 recommend a time until such time that the Commission
14 feels comfortable in adjudicating this matter.

15 CHAIRMAN FLORES: Well, that's my point and I
16 think we should have a discussion about that and I
17 think that's why we need some sense about how much
18 time we're talking about. That's what I'm asking in
19 terms of, again, whether the Commission should just
20 decide how much time it needs.

21 JUDGE WALLACE: Mr. Chairman, the Commission
22 doesn't really need to vote on any time matter.

1 Commissioner O'Connell-Diaz succinctly stated the
2 law. If this complaint case is covered by the
3 one-year deadline -- going past the deadline is not
4 fatal. It merely means that the parties can go into
5 Circuit Court to get a Writ of Mandamus ordering the
6 Commission to issue an order.

7 So if the Commission takes additional
8 time, then there is really no -- there is no default
9 in this situation.

10 CHAIRMAN FLORES: Okay. Very well.

11 JUDGE GILBERT: If I might, there have been
12 such agreements to extend the case and the reason I
13 want to emphasize that is because that is part of a
14 law that constrains us. We have said -- we as a body
15 now have said that we have accepted six extensions of
16 the case because the parties have acted within the
17 terms of the law to extend it each time and that at
18 some point, at least one party said, I'm unwilling to
19 follow that aspect of the law anymore.

20 I'm not sure that we can safely say
21 that if we simply proceed beyond the deadline that we
22 retain the power to issue an order. I just want to

1 put it out there and make sure you are cautioned
2 about that.

3 COMMISSIONER FORD: Who asked for these six
4 extensions?

5 Was it the parties or was it us, the
6 Commission?

7 JUDGE GILBERT: Well, the parties did, but --

8 COMMISSIONER FORD: Okay.

9 JUDGE GILBERT: -- they're following the law
10 that's out --

11 COMMISSIONER O'CONNELL-DIAZ: The Commission
12 was never --

13 COMMISSIONER FORD: -- apprised.

14 COMMISSIONER O'CONNELL-DIAZ: -- advised of
15 that.

16 JUDGE GILBERT: I'm sorry?

17 COMMISSIONER O'CONNELL-DIAZ: Was the
18 Commission, other than your granting them that
19 request, sitting in -- was there any discussion about
20 that on the record about this is going to add time at
21 the end of the case if it's not settled?

22 JUDGE GILBERT: Well, actually, yes, in a sense

1 that each extension adds 60 days to the case. I
2 don't want to give you the wrong impression about how
3 the parties proceeded here and, ultimately, I don't
4 really care to defend them one way or the other. So
5 if you are angry at them, you're angry at them.

6 COMMISSIONER FORD: Oh, we're angry.

7 COMMISSIONER O'CONNELL-DIAZ: No. I don't like
8 being backed up against the wall by someone. We've
9 given the parties time to go through a settlement and
10 we are -- our time is short --

11 JUDGE GILBERT: No. I understand.

12 JUDGE WALLACE: Mr. Chairman, I can cut this
13 short, I think. I'm not -- and if you want to
14 discuss this with Mrs. Schroeder in further detail.
15 This case wasn't brought pursuant to Section 10-108.
16 So it's quite arguable that the one-year deadline
17 doesn't apply anyway and we did not need to have
18 these extensions.

19 COMMISSIONER O'CONNELL-DIAZ: Thank you.
20 That's a good point, I didn't think of that.

21 CHAIRMAN FLORES: Now, the -- I still have a
22 question -- even more so for the other

1 Commissioners -- in terms of -- and also Judge
2 Wallace, we are still, though -- you know, this is up
3 for today on a Request for Oral Argument. There is a
4 formal request.

5 So do we want to proceed in granting
6 or decide on that motion here today not knowing how
7 much time we're going to give ourselves with regards
8 to -- then we will hold the hearing?

9 Commissioner Diaz.

10 COMMISSIONER O'CONNELL-DIAZ: I think we're no
11 longer under the mistaken impression that we have
12 that year deadline. So I think if it is the
13 Commission's desire to entertain oral argument, that
14 question should be raised and we should figure
15 amongst ourselves when -- that date to convene that
16 oral argument and probably give directions to the
17 scope of what we'd like addressed in those oral
18 arguments. That would just be a proposal I might
19 suggest.

20 CHAIRMAN FLORES: Any other comments or
21 feedback from the other Commissioners?

22 (No response.)

1 Very well. Why don't we -- at this
2 time then I'd like to -- is there a motion to grant
3 the oral argument?

4 COMMISSIONER COLGAN: So moved.

5 CHAIRMAN FLORES: Is there a second?

6 I didn't hear a second.

7 Is there a second.

8 COMMISSIONER ELLIOTT: Second.

9 CHAIRMAN FLORES: Thank you.

10 All in favor say "aye."

11 (Chorus of ayes.)

12 Any opposed?

13 (No response.)

14 The vote is 5-0. The motion for oral
15 argument is granted.

16 Moving on to Item 8, Docket --

17 JUDGE GILBERT: Chairman, I've been operating
18 under the impression that I need to have an order to
19 you as quickly as possible and I was going to try to
20 do that at the latest by tomorrow.

21 So --

22 CHAIRMAN FLORES: That was --

1 JUDGE GILBERT: -- do you still want me to
2 proceed with that or are we now on a different
3 schedule?

4 CHAIRMAN FLORES: No.

5 COMMISSIONER O'CONNELL-DIAZ: No. We want --
6 get the Prder to us. The Commission will decide what
7 it wants to order in its Order, but I believe this
8 Proposed Order went out on January 11th. So -- I got
9 the briefs -- I would say we should get the Order.

10 CHAIRMAN FLORES: Mary, what do you think?

11 MS. STEPHENS-SCHROEDER: I have to defer to
12 you. That is your decision.

13 CHAIRMAN FLORES: I just want to make sure that
14 we are on the time line, though, that we can meet and
15 I appreciate everyone's --

16 MS. STEPHENS-SCHROEDER: Right. And --

17 CHAIRMAN FLORES: -- I just want to make
18 sure --

19 MS. STEPHENS-SCHROEDER: I think you can
20 still --

21 JUDGE WALLACE: Mr. Chairman, when did you want
22 to set oral argument?

1 CHAIRMAN FLORES: That was the point. I was
2 trying to make. I wanted to make sure that we are
3 all on the same time line and we haven't had the
4 opportunity to designate a time. So that's why I was
5 suggesting that perhaps we figure -- this is my
6 recommendation: My recommendation is going to be
7 that we vote on the motion to provide for oral
8 argument. I think you will give the Commission the
9 opportunity to have some meetings of the mind in
10 terms of timing. We will get back to the
11 Administrative Law Judge here, get back to all the
12 parties -- including, you, Mary.

13 Very well. So we're going to move on
14 to Item No. 8, Docket 09-0461, Atmos Energy
15 Corporation, which has applied for the implementation
16 of a universal shelf registration. Administrative
17 Law Judge Wallace recommends entering the order.

18 Is there any discussion on this
19 matter?

20 (No response.)

21 Any objections?

22 (No response.)

1 Hearing none, the order is entered.

2 Item No. 9 is Docket 09-0251, the City

3 of Champaign and the Attorney General. The Office of

4 the Attorney General had filed a Joint Request for

5 Oral Argument in the Illinois American Water Company

6 rate case. Rider QIP is the desired topic for oral

7 argument. According to Section 9-201 of the Act, the

8 Commission is required to grant oral argument in rate

9 case proceedings.

10 Is there any discussion?

11 (No response.)

12 This serves as official notice that

13 oral argument will take place on February 23rd, 2010,

14 at 2:00 p.m. in Springfield. The issue to be argued

15 is Rider QIP in the Illinois American Water rate

16 case.

17 Item 10 is Docket 08- --

18 JUDGE WALLACE: Mr. Chairman?

19 CHAIRMAN FLORES: Yes.

20 JUDGE WALLACE: Judge Yoder had an item that he

21 wanted to bring to your attention.

22 JUDGE YODER: I just wanted to inform the

1 Commission that reply briefs on exception in
2 Docket 09-0251 were due today. Our anticipated
3 procedure then would be to review those and
4 incorporate anything that is necessary into the
5 Proposed Order.

6 If the Commission wishes, I will
7 prepare my recommendation for a Final Order. I can
8 put it on the next week's agenda for your Honor for
9 discussion purposes only or if the Commission
10 desires, send it out however the Commission desires
11 to send it out. I could have my recommendation on
12 the final proposed -- Final Order for the Commission
13 to review prior to oral argument.

14 CHAIRMAN FLORES: Any discussion by the
15 Commissioners?

16 COMMISSIONER COLGAN: I think that would be
17 good to have --

18 COMMISSIONER FORD: I think so, too.

19 COMMISSIONER COLGAN: -- a Proposed Order
20 before we have the oral argument.

21 JUDGE YODER: The Proposed Order is out, the
22 reply briefs on exception --

1 COMMISSIONER FORD: Okay.

2 COMMISSIONER COLGAN: Okay.

3 COMMISSIONER O'CONNELL-DIAZ: Thank you,
4 Judge Yoder.

5 CHAIRMAN FLORES: Did you understand that?

6 (No response.)

7 Moving on.

8 JUDGE YODER: Actually, my understanding is I
9 will prepare my recommendation for a Final Order and
10 that will set it on the next agenda, that way the
11 Commission will have it for review sometime prior to
12 the oral argument?

13 CHAIRMAN FLORES: Yes. With those such
14 factors.

15 JUDGE YODER: All right. Thank you.

16 CHAIRMAN FLORES: Thank you.

17 Item 10 is Docket 08-0569. Illinois
18 Bell Telephone Company filed a second application for
19 a --

20 COMMISSIONER ELLIOTT: Excuse me.
21 Mr. Chairman?

22 CHAIRMAN FLORES: Yes.

1 COMMISSIONER ELLIOTT: Does that require --
2 Item 9, does that require a vote from the Commission
3 or is it just put under as stayed?
4 CHAIRMAN FLORES: It's put under.
5 COMMISSIONER ELLIOTT: Okay. Thank you.
6 CHAIRMAN FLORES: Is there any discussion --
7 we're going back to Item 10, Docket 08-0569.
8 Illinois Bell Telephone Company filed, again, a
9 second application for rehearing regarding the
10 legality of the DSL Internet requirements contained
11 in the June 24th order. Administrative Law Judge
12 Hilliard recommends denying the second application.
13 Is there any discussion in this
14 matter?
15 COMMISSIONER ELLIOTT: Yes, Mr. Chairman. To
16 be consistent with my prior vote in this case, I
17 would recommend the application be granted.
18 COMMISSIONER FORD: To be consistent with me
19 also, I will recommend that it be granted.
20 CHAIRMAN FLORES: Anything further?
21 (No response.)
22 Okay. Well, is there a motion to deny

1 the second application?

2 COMMISSIONER COLGAN: So moved.

3 CHAIRMAN FLORES: Is there a second?

4 (No response.)

5 I will second it.

6 All in favor say "aye."

7 COMMISSIONER COLGAN: Aye.

8 COMMISSIONER O'CONNELL-DIAZ: Aye.

9 CHAIRMAN FLORES: Aye.

10 Any opposed?

11 COMMISSIONER FORD: Nay.

12 CHAIRMAN FLORES: We're going to do a roll

13 call --

14 COMMISSIONER FORD: Absolutely.

15 CHAIRMAN FLORES: -- to make sure we get this

16 right on the record.

17 Commissioner O'Connell-Diaz?

18 COMMISSIONER O'CONNELL-DIAZ: Aye.

19 CHAIRMAN FLORES: Commissioner Ford?

20 COMMISSIONER FORD: Nay.

21 CHAIRMAN FLORES: Commissioner Elliott?

22 COMMISSIONER ELLIOTT: No.

1 CHAIRMAN FLORES: Commissioner Colgan?

2 COMMISSIONER COLGAN: Aye.

3 CHAIRMAN FLORES: And Chairman Flores votes

4 aye.

5 COMMISSIONER O'CONNELL-DIAZ: And that was in

6 concurrence with the recommendation of the

7 Administrative Law Judge; correct?

8 CHAIRMAN FLORES: That's correct.

9 The vote is 3-2. The second

10 application for rehearing is denied.

11 Item 11 is the 2009 Annual Report on

12 electricity, gas, water and sewer utilities. Staff

13 recommends adopting the report and submitting it to

14 the Illinois General Assembly.

15 Is there a motion to adopt the 2009

16 Annual Report and to submit a report to the Illinois

17 General Assembly?

18 COMMISSIONER FORD: So moved.

19 CHAIRMAN FLORES: Is there a second?

20 COMMISSIONER O'CONNELL-DIAZ: Second.

21 CHAIRMAN FLORES: It's been moved and seconded.

22 All in favor say "aye."

1 (Chorus of ayes.)

2 Any opposed?

3 (No response.)

4 None. The vote is 5-0. The 2009

5 Annual Report is granted and will be submitted to the

6 Illinois General Assembly.

7 Judge Wallace, is there any other

8 matter to come before the Commission?

9 JUDGE WALLACE: No, Mr. Chairman.

10 CHAIRMAN FLORES: All right. I wanted to thank

11 everyone in Springfield and thank everyone here.

12 Hearing that there was no other

13 matters, the meeting stands adjourned. Thank you so

14 much.

15 (Whereupon, the public utility

16 regular open meeting

17 was adjourned.)

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